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15 *Intermodal Services, LLC, XPO Port*
16 *Services, Inc., XPO Logistics Port*
17 *Services, LLC, and Jeffrey Trauner*

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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

20 ANGEL OMAR ALVAREZ, an
21 individual; ALBERTO RIVERA, an
22 individual; and FERNANDO
23 RAMIREZ, an individual; JUAN
24 ROMERO, an individual; and JOSE
25 PAZ, an individual; on behalf of
themselves and all others similarly
situated.

26 Plaintiffs.

27 | P a g e

Case No. 2:18-cv-03736-SJO-E

**[PROPOSED] ORDER ON
STIPULATED AMENDED
PROTECTIVE ORDER
REGARDING CONFIDENTIAL
INFORMATION**

Dept: 10C

Judge: Hon. S. James Otero

Consolidated with Case Nos.:
2:18-cv-06175-SJO-E

1 XPO LOGISTICS CARTAGE, LLC dba
2 XPO LOGISTICS, a Delaware Limited
3 Liability Company; XPO CARTAGE,
4 INC. dba XPO LOGISTICS, a Delaware
corporation; JEFFREY TRAUNER, an
individual; and DOES 1-100, inclusive,

2:18-cv-08220-SJO-E
2:18-cv-09144-SJO-E

5 Defendants.
6

7 XPO LOGISTICS CARTAGE, LLC
8 dba XPO LOGISTICS, a Delaware
9 Limited Liability Company,

10 Cross-Complainant,
11

12 v.
13

14 ANGEL OMAR ALVAREZ, an
15 individual; ALBERTO RIVERA, an
16 individual; and FERNANDO
17 RAMIREZ, an individual; JUAN
18 ROMERO, an individual; and JOSE
PAZ, an individual; on behalf of
themselves and all others similarly
situated,

19 Cross-Defendants.
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1 *Continued from first page*

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1 WHEREAS, Plaintiffs and Cross-Defendants Angel Omar Alvarez, Alberto
2 Rivera, Fernando Ramirez, Juan Romero, Jose Paz, Jairo Moreno Martinez, Jesus
3 Carreon, Rodolpho Moreno, Edgar Mendoza, Reynaldo Gomez Acosta, and
4 Servando Avila Luciano and Defendant and Cross-Complainant XPO Logistics
5 Cartage, LLC, and Defendants XPO Cartage, Inc., XPO Logistics, Inc., XPO
6 Logistics, LLC, XPO Intermodal Solutions, Inc., XPO Intermodal Services, LLC,
7 XPO Port Services, Inc., XPO Logistics Port Services, LLC, and Jeffrey Trauner
8 have determined that certain information to be produced in this action may contain
9 Confidential Information (as defined below), the unauthorized disclosure of which
10 could be detrimental to the legitimate commercial or privacy interests of the parties
11 that produced or designated this information as confidential or would contravene
12 applicable law;

13 WHEREAS, the original protective order (Dkt. 60) entered into in these
14 consolidated actions on November 30, 2018 preceded the Court's January 14, 2019
15 order consolidating the action styled *Arellano et al. v. XPO Logistics Cartage, LLC*
16 *et al.*, Case No. CV 08220-SJO-(Ex) (see Case No. CV 18-08220 SJO (Ex), Dkt.
17 30);

18 WHEREAS, all of the parties in each of the four consolidated actions wish to
19 maintain and protect confidentiality of Confidential Information and materials and
20 restrict access to and disclosure of such information and materials;

21 THE PARTIES HEREBY STIPULATE, by and through their respective
22 counsel of record, to entry of the following amended protective order as an order of
23 the above-captioned Court ("Stipulated Amended Protective Order") and propose to
24 the Court as follows:

25 1. PURPOSES AND LIMITATIONS

26 Discovery in this action potentially involves production of confidential,
27 proprietary or private information for which special protection from public
28 disclosure and from use for any purpose other than pursuing this litigation may be

1 warranted. Accordingly, the parties hereby stipulate to and petition the Court to
2 enter the following Stipulated Amended Protective Order. The parties acknowledge
3 that this Order does not confer blanket protections on all disclosures or responses to
4 discovery and that the protection it affords from public disclosure and use extends
5 only to the limited information or items that are entitled to confidential treatment
6 under the applicable legal principles.

7 2. GOOD CAUSE STATEMENT

8 Discovery is likely to involve trade secrets, confidential and proprietary
9 information concerning XPO's business operations, XPO's contracts and
10 agreements with customers and drivers, personal information of Plaintiffs and other
11 third party individuals, including personal identifying information such as social
12 security numbers, customer and pricing lists, and other valuable commercial,
13 financial, technical and/or proprietary information for which special protection
14 from public disclosure and from use for any purpose other than prosecution of this
15 action may be warranted. Such confidential and proprietary materials and
16 information consist of, among other things, confidential business or financial
17 information, information regarding confidential business practices, or commercial
18 information (including information implicating privacy rights of third parties),
19 information otherwise generally unavailable to the public, or which may be
20 privileged or otherwise protected from disclosure under state or federal statutes,
21 court rules, case decisions, or common law. Accordingly, to expedite the flow of
22 information, to facilitate the prompt resolution of disputes over confidentiality of
23 discovery materials, to adequately protect information the parties are entitled to
24 keep confidential, to ensure that the parties are permitted reasonable necessary uses
25 of such material in preparation for and in the conduct of trial, to address their
26 handling at the end of the litigation, and to serve the ends of justice, a protective
27 order for such information is justified in this matter. It is the intent of the parties
28 that information will not be designated as confidential for tactical reasons and that

1 nothing be so designated without a good faith belief that it has been maintained in a
2 confidential, non-public manner, and there is good cause why it should not be part
3 of the public record of this case.

4 3. ACKNOWLEDGMENT OF UNDER SEAL FILING PROCEDURE

5 The parties further acknowledge, as set forth in Section 14.3, below, that this
6 Stipulated Amended Protective Order does not entitle them to file confidential
7 information under seal; Local Civil Rule 79-5 sets forth the procedures that must be
8 followed and the standards that will be applied when a party seeks permission from
9 the court to file material under seal. There is a strong presumption that the public
10 has a right of access to judicial proceedings and records in civil cases. In
11 connection with non-dispositive motions, good cause must be shown to support a
12 filing under seal. *See Kamakana v. City and County of Honolulu*, 447 F.3d 1172,
13 1176 (9th Cir. 2006), *Phillips v. Gen. Motors Corp.*, 307 F.3d 1206, 1210-11 (9th
14 Cir. 2002), *Makar-Welbon v. Sony Electrics, Inc.*, 187 F.R.D. 576, 577 (E.D. Wis.
15 1999) (even Stipulated Amended Protective Orders require good cause showing).
16 A specific showing of good cause or compelling reasons with proper evidentiary
17 support and legal justification, must be made with respect to Protected Material that
18 a party seeks to file under seal. The parties' mere designation of Disclosure or
19 Discovery Material as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL –
20 ATTORNEYS' EYES ONLY" does not— without the submission of competent
21 evidence by declaration, establishing that the material sought to be filed under seal
22 qualifies as confidential, privileged, or otherwise protectable—constitute good
23 cause.

24 Further, if a party requests sealing related to a dispositive motion or trial,
25 then compelling reasons, not only good cause, for the sealing must be shown, and
26 the relief sought shall be narrowly tailored to serve the specific interest to be
27 protected. *See Pintos v. Pacific Creditors Ass'n.*, 605 F.3d 665, 677-79 (9th Cir.
28 2010). For each item or type of information, document, or thing sought to be filed

1 or introduced under seal, the party seeking protection must articulate compelling
2 reasons, supported by specific facts and legal justification, for the requested sealing
3 order. Again, competent evidence supporting the application to file documents
4 under seal must be provided by declaration.

5 Any document that is not confidential, privileged, or otherwise protectable in
6 its entirety will not be filed under seal if the confidential portions can be redacted.
7 If documents can be redacted, then a redacted version for public viewing, omitting
8 only the confidential, privileged, or otherwise protectable portions of the document,
9 shall be filed. Any application that seeks to file documents under seal in their
10 entirety should include an explanation of why redaction is not feasible.

11 4. DEFINITIONS

12 4.1 *Alvarez Action*: the action titled *Angel Omar Alvarez, et al. v. XPO*
13 *Logistics Cartage, LLC dba XPO Logistics, et al.*, Case Number 2:18-cv-03736.

14 4.2 *Martinez Action*: the action titled *Jairo Moreno Martinez, et al. v.*
15 *XPO Logistics, Inc., et al.*, Case Number 2:18-cv-06175.

16 4.3 *Mendoza Action*: the action titled *Edgar Mendoza v. XPO Logistics*
17 *Cartage, LLC, dba XPO Logistics, et al.*, Case Number 2:18-cv-09144.

18 4.4 *Arrellano Action*: the action titled *Victor Cortez Arrellano v. XPO*
19 *Port Service, Inc.*, Case Number 2:18-cv-08220.

20 4.5 *Consolidated Actions*: Collectively refers to the *Alvarez Action*,
21 *Martinez Action*, *Mendoza Action* and *Arrellano Action*.

22 4.6 *Challenging Party*: a Party or Non-Party that challenges the
23 designation of information or items under this Order.

24 4.7 “*CONFIDENTIAL*” Information or Items: Disclosure or Discovery
25 Materials for which a Designating Party believes in good faith that such
26 information or items are entitled to confidential treatment.

27 4.8 *Counsel*: Outside Counsel of Record and House Counsel (as well as
28 their support staff).

1 4.9 Designating Party: a Party or Non-Party that designates information or
2 items that it produces in disclosures or in responses to discovery as
3 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
4 ONLY.”

5 4.10 Disclosure or Discovery Material: all items or information, regardless
6 of the medium or manner in which it is generated, stored, or maintained (including,
7 among other things, testimony, transcripts, and tangible things), that are produced
8 or generated in disclosures or responses to discovery or testified to during
9 deposition or other proceedings.

10 4.11 Expert: a person with specialized knowledge or experience in a matter
11 pertinent to the litigation who has been retained by a Party or its Counsel to serve as
12 an expert witness, or expert consultant, in any of the Consolidated Actions.

13 4.12 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY”
14 Information or Items: Disclosure or Discovery Material for which a Designating
15 Party believes in good faith that the disclosure of such information or item to
16 another Party or Non-Party would create a substantial risk of serious financial or
17 other injury that cannot be avoided by less restrictive means.

18 4.13 House Counsel: attorneys who are employees of a party in any of the
19 Consolidated Actions. House Counsel does not include Outside Counsel of Record
20 or any other outside counsel.

21 4.14 Non-Party: any natural person, partnership, corporation, association or
22 other legal entity not named as a Party in any of the Consolidated Actions.

23 4.15 Outside Counsel of Record: attorneys who are not employees of a
24 Party to any of the Consolidated Actions, but are retained to represent a Party any
25 of the Consolidated Actions and have appeared in any of the Consolidated Actions
26 on behalf of that Party or are affiliated with a law firm that has appeared on behalf
27 of that Party, and includes support staff.

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1 4.16 Party: any party to any of the Consolidated Actions, including all of its
2 officers, directors, employees, consultants, retained experts, and Outside Counsel of
3 Record (and their support staffs).

4 4.17 Producing Party: a Party or Non-Party that produces Disclosure or
5 Discovery Material in any of the Consolidated Actions.

6 4.18 Professional Vendors: persons or entities that provide litigation
7 support services (e.g., photocopying, videotaping, translating, preparing exhibits or
8 demonstrations, and organizing, storing, or retrieving data in any form or medium)
9 and their employees and subcontractors.

10 4.19 Protected Material: any Disclosure or Discovery Material that is
11 designated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL –
12 ATTORNEYS’ EYES ONLY.”

13 4.20 Receiving Party: a Party that receives Disclosure or Discovery
14 Material from a Producing Party.

15 5. SCOPE

16 The protections conferred by this Stipulation and Order cover not only
17 Protected Material (as defined above), but also (1) any information copied or
18 extracted from Protected Material; (2) all copies, excerpts, summaries, or
19 compilations of Protected Material; and (3) any testimony, conversations, or
20 presentations by Parties or their Counsel that might reveal Protected Material.

21 Any use of Protected Material at trial shall be governed by the orders of the
22 trial judge and other applicable authorities. This Order does not govern the use of
23 Protected Material at trial.

24 6. DESIGNATING PROTECTED MATERIAL

25 6.1 Exercise of Restraint and Care in Designating Material for Protection.
26 Each Party or Non-Party that designates information or items for protection under
27 this Stipulated Amended Protective Order as “CONFIDENTIAL” or “HIGHLY
28 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” must take care to limit any

1 such designations to specific material that qualifies under the appropriate standards.
2 The Designating Party must designate for protection only those parts of material,
3 documents, items or oral or written communications that qualify so that other
4 portions of the material, documents, items or communications for which protection
5 is not warranted are not swept unjustifiably within the ambit of this Order.
6 Designations with a higher confidentiality level when a lower level would suffice
7 are prohibited.

8 Mass, indiscriminate or routinized designations are prohibited. Designations
9 that are shown to be clearly unjustified or that have been made for an improper
10 purpose (e.g., to unnecessarily encumber the case development process or to
11 impose unnecessary expenses and burdens on other parties) may expose the
12 Designating Party to sanctions.

13 If it comes to a Designating Party's attention that information or items that it
14 designated for protection do not qualify for protection or do not qualify for the level
15 of protection initially asserted, that Designating Party must promptly notify all
16 other Parties that it is withdrawing the inapplicable designation.

17 6.2 Manner and Timing of Designations. Except as otherwise provided in
18 this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material
19 that qualifies for protection under this Order must be clearly so designated before
20 the material is disclosed or produced.

21 Designation in conformity with this Order requires:

22 (a) for information in documentary form (e.g., paper or electronic
23 documents, but excluding transcripts of depositions or other pretrial or trial
24 proceedings), that the Producing Party affix at a minimum, the applicable legend
25 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
26 ONLY" (hereinafter "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL"
27 legend), to each page that contains protected material. If only a portion of the
28 material on a page qualifies for protection, the Producing Party also must clearly

1 identify the protected portion(s) (e.g., by making appropriate markings in the
2 margins).

3 A Party or Non-Party that makes original documents available for inspection
4 need not designate them for protection until after the inspecting Party has indicated
5 which documents it would like copied and produced. During the inspection and
6 before the designation, all of the material made available for inspection shall be
7 deemed "HIGHLY CONFIDENTIAL." After the inspecting Party has identified the
8 documents it wants copied and produced, the Producing Party must determine
9 which documents, or portions thereof, qualify for protection under this Order. Then,
10 before producing the specified documents, the Producing Party must affix the
11 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" legend to each page that
12 contains Protected Material. If only a portion of the material on a page qualifies for
13 protection, the Producing Party also must clearly identify the protected portion(s)
14 (e.g., by making appropriate markings in the margins).

15 With regard to any material containing information specifically pertaining to
16 a Party other than the Producing Party, the Producing Party shall give counsel for
17 said Party notice, at least five (5) business days prior to any such production, of the
18 Producing Party's intent to produce said material as Disclosure or Discovery
19 Material in the Consolidated Actions. In order to allow the Party whose
20 information is contained in the material to identify any private information entitled
21 to confidential treatment, the Producing Party's notice to the relevant Party shall
22 include a copy of all materials the Producing Party intends to produce as Disclosure
23 or Discovery Materials in the Consolidated Actions. The Party whose information
24 is contained in the material that the Producing Party seeks to produce as Disclosure
25 or Discovery Materials in the Consolidated Actions may, within five (5) business
26 days of receiving notice from the Producing Party, either: (i) affix the
27 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL" legend to each page that
28 contains Protected Material or (ii) direct the Producing Party to redact certain

1 private information specifically pertaining to the Party (by specifically and clearly
2 identifying the particular information or material sought to be redacted by Bates
3 Number and location).

4 (b) for testimony given in deposition or other proceeding, the
5 Designating Party shall specify all protected testimony and the level of protection
6 being asserted. In the case of a deposition, the Designating Party may make that
7 designation during the deposition or on the next business day following the
8 deposition. In the case of other proceeding(s), the Designating Party may make that
9 designation during the proceeding or may also invoke, on the record or by written
10 notice to all parties on or before the next business day, a right to have up to seven
11 days from the date the proceeding transcript is received by the Designating Party to
12 make its designations. In the event there is a motion or hearing deadline for which
13 the proceeding testimony, other than deposition testimony, may be necessary, the
14 Designating Party shall make its designations to the proceeding transcript by 5:00
15 PST at least three (3) business days before the motion or hearing deadline. The use
16 of a document as an exhibit at a deposition or hearing shall not in any way affect its
17 designation.

18 (c) for information produced in some form other than documentary
19 and for any other tangible items, that the Producing Party affix in a prominent place
20 on the exterior of the container or containers in which the information is stored the
21 legend "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL." If only a portion or
22 portions of the information warrants protection, the Producing Party, to the extent
23 practicable, shall identify the protected portion(s).

24 With regard to any information specifically pertaining to a Party other than
25 the Producing Party, the Producing Party shall give counsel for said Party notice, at
26 least five (5) business days prior to any such production, of the Producing Party's
27 intent to produce said information as Disclosure or Discovery Material in the
28 Consolidated Actions. In order to allow the Party whose information is to be

1 produced to identify any private information entitled to confidential treatment, the
2 Producing Party's notice to the relevant Party shall describe in detail the
3 information sought to be produced as Disclosure or Discovery Material in the
4 Consolidated Actions. The Party whose information is contained in the material
5 intended to be produced by the Producing Party may, within five (5) business days
6 of receiving notice from the Producing Party, affix in a prominent place on the
7 exterior of the container or containers in which the information is stored the legend
8 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL."

9 6.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent
10 failure to designate qualified information or items does not, standing alone, waive
11 the Designating Party's right to secure protection under this Order for such
12 material. Upon timely correction of a designation, the Receiving Party must make
13 reasonable efforts to assure that the material is treated in accordance with the
14 provisions of this Order.

15 7. CHALLENGING CONFIDENTIALITY DESIGNATIONS

16 7.1 Timing of Challenges. Any Party or Non-Party may challenge a
17 designation of confidentiality, including a directive to redact private, confidential
18 material under Section 6.2 above, at any time that is consistent with the Court's
19 Scheduling Order.

20 7.2 Meet and Confer. The Challenging Party shall initiate the dispute
21 resolution process under Local Rule 37-1 et seq.

22 7.3 Joint Stipulation. Any challenge submitted to the Court shall be via a
23 joint stipulation pursuant to Local Rule 37-2.

24 7.4 The burden of persuasion in any such challenge proceeding shall be on
25 the Designating Party. Frivolous challenges, and those made for an improper
26 purpose (e.g., to harass or impose unnecessary expenses and burdens on other
27 parties) may expose the Challenging Party to sanctions. Unless the Designating
28 Party has waived or withdrawn the confidentiality designation, all parties shall

1 continue to afford the material in question the level of protection to which it is
2 entitled under the Producing Party's designation until the Court rules on the
3 challenge.

4 8. ACCESS TO AND USE OF PROTECTED MATERIAL

5 8.1 Basic Principles. A Receiving Party may use Protected Material that is
6 disclosed or produced by another Party or by a Non-Party in connection with any of
7 the Consolidated Actions only for prosecuting, defending or attempting to settle any
8 of the Consolidated Actions. Such Protected Material may be disclosed only to the
9 categories of persons and under the conditions described in this Order. When any of
10 the Consolidated Actions has been terminated, a Receiving Party in the terminated
11 action must comply with the provisions of Section 14 below (FINAL
12 DISPOSITION).

13 Protected Material must be stored and maintained by a Receiving Party at a
14 location and in a secure manner that ensures that access is limited to the persons
15 authorized under this Order.

16 8.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless
17 otherwise ordered by the Court or permitted in writing by the Designating Party, a
18 Receiving Party may disclose any information or item designated
19 "CONFIDENTIAL" only to:

20 (a) the Receiving Party's Outside Counsel of Record in the
21 Consolidated Actions, as well as employees of said Outside Counsel of Record to
22 whom it is reasonably necessary to disclose the information for purposes of any of
23 the Consolidated Actions;

24 (b) the officers, directors, and employees (including House
25 Counsel) of the Receiving Party to whom disclosure is reasonably necessary for
26 purposes of any of the Consolidated Actions;

27 (c) Experts (as defined in this Order) of the Receiving Party to
28 whom disclosure is reasonably necessary for purposes of any of the Consolidated

1 Actions and who have signed the “Acknowledgment and Agreement to Be Bound”
2 (Exhibit A);

3 (d) the Court and its personnel;

4 (e) court reporters and their staff;

5 (f) professional jury or trial consultants, mock jurors, and

6 Professional Vendors to whom disclosure is reasonably necessary for purposes of
7 any of the Consolidated Actions and who have signed the “Acknowledgment and
8 Agreement to Be Bound” (Exhibit A);

9 (g) the author or recipient of a document containing the information
10 or a custodian or other person who otherwise possessed or knew the information;

11 (h) during their depositions, witnesses, and attorneys for witnesses,
12 in any of the Consolidated Actions to whom disclosure is reasonably necessary
13 provided the witness and the witness’s attorney sign the form attached as Exhibit A
14 hereto. Pages of transcribed deposition testimony or exhibits to depositions that
15 reveal Protected Material may be separately bound by the court reporter and may
16 not be disclosed to anyone except as permitted under this Stipulated Amended
17 Protective Order; and

18 (i) any mediators or settlement officers and their supporting
19 personnel, mutually agreed upon by any of the parties engaged in settlement
20 discussions.

21 8.3 Disclosure of “HIGHLY CONFIDENTIAL – ATTORNEYS EYES
22 ONLY” Information or Items. Unless permitted in writing by the Designating
23 Party, a Receiving Party may disclose material designated “HIGHLY
24 CONFIDENTIAL – ATTORNEYS EYES ONLY” without further approval only
25 to:

26 (a) the Receiving Party’s Outside Counsel of Record in the
27 Consolidated Actions and employees of Outside Counsel of Record to whom it is
28 reasonably necessary to disclose the information;

12 8.4 Procedures for Approving or Objecting to Disclosure of "HIGHLY
13 CONFIDENTIAL – ATTORNEYS EYES ONLY" Material to House Counsel or
14 Experts. Unless agreed to in writing by the designator:

1 9. PROTECTED MATERIAL SUBPOENAED OR ORDERED
2 PRODUCED IN OTHER LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation
4 that compels disclosure of any information or items designated in any of the
5 Consolidated Actions as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
6 ATTORNEYS' EYES ONLY," or for which another Party directed that private
7 information be redacted pursuant to Section 6.2 above, the Party receiving the
8 subpoena or court order must:

9 (a) promptly notify in writing the Designating Party. Such
10 notification shall include a copy of the subpoena or court order;

11 (b) promptly notify in writing the party who caused the subpoena or
12 order to issue in the other litigation that some or all of the material covered by the
13 subpoena or order is subject to this Stipulated Amended Protective Order. Such
14 notification shall include a copy of this Stipulated Amended Protective Order; and

15 (c) cooperate with respect to all reasonable procedures sought to be
16 pursued by the Designating Party whose Protected Material may be affected. If the
17 Designating Party timely seeks a protective order, the Party served with the
18 subpoena or court order shall not produce any information designated in any of the
19 Consolidated Actions as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL -
20 ATTORNEYS' EYES ONLY" before a determination by the court from which the
21 subpoena or order issued, unless the Party has obtained the Designating Party's
22 permission. The Designating Party shall bear the burden and expense of seeking
23 protection in that court of its Protected Material and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in any of the
25 Consolidated Actions to disobey a lawful directive from another court.

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1 10. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE
2 PRODUCED IN THIS LITIGATION

3 (a) The terms of this Order are applicable to information produced
4 by a Non-Party in any of the Consolidated Actions and designated as
5 "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
6 ONLY." Such information produced by Non-Parties in connection with this
7 litigation is protected by the remedies and relief provided by this Order. Nothing in
8 these provisions should be construed as prohibiting a Non-Party from seeking
9 additional protections.

10 (b) In the event that a Party is required, by a valid discovery
11 request, to produce a Non-Party's Protected Material in its possession, and the Party
12 is subject to an agreement with the Non-Party not to produce the Non-Party's
13 Protected Material, then the Party shall:

14 (1) promptly notify in writing the Requesting Party and the
15 Non-Party, within fourteen (14) days of receiving the request, that some or
16 all of the information requested is subject to a confidentiality agreement with
17 a Non-Party;

18 (2) promptly provide the Non-Party, within fourteen (14)
19 days of receiving the request, with a copy of the Stipulated Amended
20 Protective Order in these Consolidated Actions, the relevant discovery
21 request(s), and a reasonably specific description of the information requested;
22 and

23 (3) make the information requested available for inspection
24 by the Non-Party, if requested.

25 (c) If the Non-Party fails to seek a protective order from this Court
26 within 14 days of receiving the notice and accompanying information, the
27 Receiving Party may produce the Non-Party's Protected Material responsive to the
28 discovery request. If the Non-Party timely seeks a protective order, the Receiving

1 Party shall not produce any information in its possession or control that is subject to
2 the confidentiality agreement with the Non-Party before a determination by the
3 Court. Absent a court order to the contrary, the Non-Party shall bear the burden and
4 expense of seeking protection in this Court of its Protected Material.

5 11. **UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL**

6 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed
7 Protected Material to any person or in any circumstance not authorized under this
8 Stipulated Amended Protective Order, the Receiving Party must immediately (a)
9 notify in writing the Designating Party of the unauthorized disclosures, (b) use its
10 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform
11 the person or persons to whom unauthorized disclosures were made of all the terms
12 of this Order, and (d) request such person or persons to execute the
13 “Acknowledgment an Agreement to Be Bound” attached hereto as Exhibit A.

14 12. **INADVERTENT PRODUCTION OF PRIVILEGED OR**
15 **OTHERWISE PROTECTED MATERIAL**

16 When a Producing Party gives notice to Receiving Parties that certain
17 inadvertently produced material is subject to a claim of privilege or other
18 protection, the obligations of the Receiving Parties are those set forth in Federal
19 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify
20 whatever procedure may be established in an e-discovery order that provides for
21 production without prior privilege review. Pursuant to Federal Rule of Evidence
22 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure
23 of a communication or information covered by the attorney-client privilege or work
24 product protection, the Parties may incorporate their agreement in the Stipulated
25 Amended Protective Order submitted to the court.

26 13. **MISCELLANEOUS**

27 13.1 Right to Further Relief. Nothing in this Order abridges the rights of
28 any Party to seek its modification by the Court in the future.

1 13.2 Right to Assert Other Objections. By stipulating to the entry of this
2 Protective Order, no Party waives any right it otherwise would have to object to
3 disclosing or producing any information or item on any ground not addressed in
4 this Stipulated Amended Protective Order. Similarly, no Party waives any right to
5 object on any ground to use in evidence of any of the material covered by this
6 Protective Order.

7 13.3 Filing Protected Material. A Party that seeks to file under seal any
8 Protected Material must comply with Local Civil Rule 79-5. Protected Material
9 may only be filed under seal pursuant to a court order authorizing the sealing of the
10 specific Protected Material. If a Party's request to file Protected Material under seal
11 is denied by the court, then the Receiving Party may file the information in the
12 public record unless otherwise instructed by the court.

13 14. FINAL DISPOSITION

14 After the final disposition of any of the Consolidated Actions, as defined in
15 Section 4, within 60 days of a written request by the Designating Party, each
16 Receiving Party in the terminated action must return all Protected Material to the
17 Producing Party or destroy such material. As used in this subdivision, "all Protected
18 Material" includes all copies, abstracts, compilations, summaries, and any other
19 format reproducing or capturing any of the Protected Material. Whether the
20 Protected Material is returned or destroyed, the Receiving Party must submit a
21 written certification to the Producing Party (and, if not the same person or entity, to
22 the Designating Party) by the 60-day deadline that (1) identifies (by category,
23 where appropriate) all the Protected Material that was returned or destroyed and (2)
24 affirms that the Receiving Party has not retained any copies, abstracts,
25 compilations, summaries or any other format reproducing or capturing any of the
26 Protected Material. Notwithstanding this provision, Counsel are entitled to retain an
27 archival copy of all pleadings, motion papers, trial, deposition, and hearing
28 transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert

1 reports, attorney work product, and consultant and expert work product, even if
2 such materials contain Protected Material. Any such archival copies that contain or
3 constitute Protected Material remain subject to this Protective Order.

4 || 15. VIOLATION

5 Any violation of this Order may entitle any Party to secure any relief as the
6 Court deems just and appropriate.

8 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.

10 Dated: 4/20/19

[Handwritten signature of the author, John G. Clegg]

Honorable Charles F. Eick
United States Magistrate Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

3 I, _____ [print or type full name], of _____
4 _____ [print or type full address], declare
5 under penalty of perjury that I have read in its entirety and understand the
6 Stipulated Amended Protective Order that was issued by the United States District
7 Court for the Central District of California on _____ [date] in the
8 case of *Angel Omar Alvarez, et al. v. XPO Logistics Cartage, LLC dba XPO*
9 *Logistics, et al.*, 2:18-cv-03736-SJO-E, and the cases consolidated therewith (the
10 “Consolidated Actions”).

11 I agree to comply with and to be bound by all the terms of this Stipulated
12 Protective Order, and I understand and acknowledge that failure to so comply could
13 expose me to sanctions and punishment in the nature of contempt. I solemnly
14 promise that I will not disclose in any manner any information or item that is
15 subject to this Stipulated Amended Protective Order to any person or entity except
16 in strict compliance with the provisions of this Stipulated Amended Protective
17 Order.

18 I further agree to submit to the jurisdiction of the United States District Court
19 for the Central District of California for the purpose of enforcing the terms of this
20 Stipulated Amended Protective Order, even if such enforcement proceedings occur
21 after termination of the Consolidated Actions.

23 | Date:

24 | City and State where sworn and signed:

25 Printed name:

26 || Signature:

27